

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OSCAR BROWN, individually and on
behalf of all others similarly situated,

Plaintiff,

-against-

WESTERN DIGITAL CORPORATION,

Defendant.

Civil Action No.: 1:20-cv-04624-AT

**[PROPOSED] CIVIL CASE
MANAGEMENT PLAN AND
SCHEDULING ORDER**

ANALISA TORRES, United States District Judge:

This Civil Case Management Plan (the “Plan”) is submitted by the Parties in accordance with Rule 26(f)(3), Fed. R. Civ. P.

1. All parties do not consent to conducting all further proceedings before a magistrate judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences.
2. This case is to be tried by a jury.
3. Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court, unless authorized by Fed. R. Civ. P. 15. Any motion to amend or to join additional parties shall be filed within 30 days from the date of this Order.
4. Initial disclosures, pursuant to Rule 26(a)(1), Fed. R. Civ. P., shall be completed not later than 14 days from the date of this Order.
5. The Parties submit the following proposals for fact discovery for the Court’s consideration:

Plaintiff’s Proposal: All fact discovery shall be completed no later than nine (9) months from the date of this Order.

Defendant’s Proposal: Discovery shall commence following the Court’s order on Defendant’s motion to transfer and, if the motion to transfer is denied, all fact discovery shall be completed no later than nine (9) months from the date of the Order denying the motion to transfer.

6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the written consent of all parties without

application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 5 above:

Event	Plaintiff's Proposal	Defendant's Proposal
Initial Requests for Production of Documents	To be served by 30 days from the date of this order.	To be served by 30 days from the date of the order on Defendant's motion to transfer.
Initial Interrogatories	To be served by 30 days from the date of this order.	To be served by 30 days from the date of the order on Defendant's motion to transfer.
Non-Expert Depositions	All depositions, with the exception of experts, to be completed by 9 months from the date of this order.	All depositions, with the exception of experts, to commence from the date of the order on Defendant's motion to transfer and be completed by 9 months from the date of such order.
Requests To Admit	To be served no later than 9 months from the date of this order.	To be served no later than 9 months from the date of the order on Defendant's motion to transfer.

7.
 - a. Certification experts shall be disclosed, by Plaintiff, with Plaintiff's motion to certify and, for Defendant, with Defendant's opposition to Plaintiff's certification motion.
 - b. Merits experts will be disclosed pursuant to the timelines set forth in Fed. R. Civ. P. Rule 26(a)(2)(D)(i).
8. Class certification briefing shall be filed accordingly:
 - a. Plaintiff's motion for class certification, and any expert reports Plaintiffs intend to use in support of class certification, shall be filed and served within 60 days of the completion of all fact discovery. Any experts disclosed with Plaintiff's certification briefing shall be made available for deposition not later than 21 days after such experts are disclosed.
 - b. Defendant's opposition to Plaintiff's motion for class certification, and any expert reports Defendant intends to use in opposition to class certification, shall be filed and served within 60 days of the filing of Plaintiff's motion for class certification. Any experts disclosed with Defendant's certification opposition shall be made available for deposition not later than 21 days after such experts are disclosed.

- c. Plaintiff's reply in support of class certification, and any rebuttal expert reports Plaintiffs intend to use in connection with class certification, shall be filed and served on or before 45 days after the filing of Defendant's opposition to Plaintiff's motion for class certification.
- 9. The deadline for filing a motion for summary judgment will be, as applicable, (1) not later than 60 days after any order denying Plaintiff's motion to certify, or (2) if a class is certified, not later than 60 days after the deadline for class members to opt out of the certified class has passed.
- 10. All counsel must meet face-to-face for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery. If a face-to-face meeting is not feasible due to COVID-19 and then-existing health conditions and/or limitations, a virtual meeting via Zoom or other like platform may be used.
- 11. The Parties state the follow regarding settlement and dispute resolution:
 - a. Counsel for the parties have discussed an informal exchange of information in aid of an early settlement of this case and have agreed upon the following: Plaintiff requested that Defendant provide him with sales data in order to allow Plaintiff to make an informed settlement demand. Defendant has provided such information and Plaintiff has made an initial settlement demand. Defendant has not yet countered or otherwise responded to Plaintiff's settlement demand, but the parties are considering a potential private party mediation.
 - b. Counsel for the parties have discussed the use of the following alternative dispute resolution mechanisms for use in this case: retention of a privately retained mediator.
 - c. Counsel for the parties recommend that the deadline to participate in the alternative dispute resolution mechanism designated in paragraph b, be set for a date that is after class certification is fully briefed.
 - d. The use of any alternative dispute resolution mechanism does not stay or modify any fate in this Order, except that the parties may make a joint request for such a stay if the parties deem such a request is mutually beneficial and necessary.
- 12. The Final Pretrial Submission Date is dependent on the Court's ruling on Plaintiff's anticipated motion for class certification. The Court will set a further case management conference after it issues its order on certification to set a trial date and other Final Pretrial Submission Dates.
- 13. Counsel for the parties have conferred and their present best estimate of the length of trial is one (1) week if the case is tried as an individual action and two (2) weeks if the case proceeds to a class trial.

14. [Other items, including those in Rule 26(f)(3).]

Substantial completion of document production, with custodian log (including e-discovery), shall be made within five (5) months [Plaintiff proposes] of this Order, [Defendant Proposes] from the date of the order on Defendant's motion to transfer. Documents shall be produced on a rolling basis at reasonable intervals beginning within three (3) months of this Order. Absent an agreement between the parties or an order from the Court, depositions are not to be held until all parties have responded to initial requests for document production.

TO BE COMPLETED BY THE COURT:

The Plan has been reviewed by the Court and, except as modified, is adopted as the Scheduling Order of this Court in accordance with Rule 16(b), Fed. R. Civ. P.

15. [Other]

16. The next Case Management Conference is scheduled for

_____ at _____.

17. The parties are directed to file a joint status report not later than one week in advance of the Case Management Conference. The parties should indicate whether they anticipate filing motion(s) for summary judgment and whether they believe the case should be referred to a Magistrate Judge for settlement discussions. The parties are reminded that, pursuant to paragraph 8, a pre-motion conference request for any motion for summary judgment must be made within fourteen (14) days of the close of fact discovery.

This ORDER may not be modified or the dates herein extended, except by further order of this Court for good cause shown. Any application to modify or extend the dates herein (except as noted in paragraph 6) shall be made in a written application in accordance with paragraph I.B. of the Court's Individual Practices and shall be made no less than five (5) days prior to the expiration of the date sought to be extended.

SO ORDERED.

Dated: _____
New York,
New York